

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

No. 4:08-CR-62-1-F  
No. 4:12-CV-2-F

GARLAND ELLISON, )  
Petitioner, )  
 )  
v. ) ORDER  
 )  
UNITED STATES OF AMERICA, )  
Respondent. )

This matter is before the court on Garland Ellison's Motion to Vacate, Set Aside or Correct his Sentence pursuant to 28 U.S.C. § 2255 [DE-75]<sup>1</sup> and a Motion for Default Judgment [DE-76].

Ellison has filed a Motion for Default Judgment [DE-76] on the basis that the Government has not responded to his § 2255 motion. Ellison argues that the Government was ordered to respond to his § 2255 motion more than six months ago, and as such, it has waived the right to file a response. The Government was not previously directed to respond to Ellison's § 2255 motion, and the Government is not required to do so unless and until so ordered.

Accordingly, the Motion for Default Judgment [DE-76] is DENIED.

The undersigned has conducted an examination of petitioner's § 2255 motion pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings and has determined that dismissal is not warranted at this time. Accordingly, the United States Attorney is DIRECTED to file an Answer

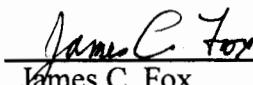
---

<sup>1</sup>Ellison's initial attempt to initiate a claim for relief under § 2255 was a non-conforming document and attachments which was filed on January 3, 2012. *See Motion [DE-69].* At the court's direction, Ellison filed this "conforming" motion on June 18, 2012. *See Motion [DE-75].*

pursuant to Rule 5, Rules Governing § 2255 Proceedings, or to make such other response as appropriate to the above-captioned § 2255 Motion to Vacate, Set Aside or Correct Sentence, within **forty (40)** days of the filing of this order.

SO ORDERED.

This the 6<sup>\*</sup> day of February, 2013.

  
\_\_\_\_\_  
James C. Fox  
Senior United States District Judge